

MILITARY LAW

***Office of Staff Judge Advocate
Fort Rucker, Alabama***



Administering Military Justice at the Unit Level

- If you remember nothing else from this briefing, always remember to ...
- C
- Y
- A



Call
Your
Attorne
y



Topics Today

- ***Commander Issues***
 - ***Conducting an investigation***
 - ***Reading Soldiers their Rights***
 - ***Search and Seizure***
 - ***Pre-Trial Confinement***
- ***Administrative Actions***
- ***Non-Judicial Punishment (Art. 15)***
- ***Courts-Martial***



Investigating Misconduct

- **Formal or informal methods**
 - AR 15-6
 - **Commander's Inquiry**
- **Reading soldiers their rights**
- **CDR should stay above the fray**
- **CID – for investigation of criminal acts**
- **Art 32 – most formal – more latter**



“Miranda Rights”

- **Rule: Anyone subject to the UCMJ must advise anyone else who is subject to UCMJ of right against self-incrimination before questioning them when questioning is intended to solicit information pertaining to misconduct.**
- **WHY??**
 - **5th Amendment to the U.S. Constitution**
 - **Right against Self-Incrimination**
 - ***Use of rank to coerce confession**



Article 31(b) Rights

- *Right to Remain Silent*
- *Anything You Say May be Used Against You*
- *Right to be Advised of Nature of Suspected Offense*
- *Right to an Attorney*



How to Advise?

- *Call MPI, SJA, or CID before talking to anyone suspected of a crime - CYA*
- *If you interview soldier--Use DA Form 3881*
 - *follow instructions on back of form*
 - *do not continue to question if soldier invokes his/her right to remain silent or if soldier asks for an attorney.*



Search and Seizure

- Need 2 things to Order a Search:
 - 1. Authority
 - 2. Probable Cause_



Authority to Search

- **Commander**
 - **Authority over person or place**
- **Military Judge**
- ***Military Magistrate**
 - **not the Prosecutor!**



PREFER COMMANDERS NOT TO AUTHORIZE SEARCHES

- *WHY? Commander's multiple roles:*
 - Accuser in C-M
 - Judge and Jury in Article 15
 - Investigator - Power to interview
- *Let the Magistrate do it!!*



PROBABLE CAUSE

- *Reasonable belief that a person, property, or other evidence is located in the place to be searched*
- *Look at the “Totality of the Circumstances”*



COMMAND INSPECTIONS

- Inspection: primary purpose to ensure security, military fitness, or good order and discipline. NO PROBABLE CAUSE REQUIRED.
- Inspection includes:
 - order to locate & confiscate unlawful weapons or contraband
 - urinalysis



WHEN INSPECTIONS ARE ABUSED

- *If primary purpose is to locate weapons or contraband and “inspection” ordered after:*
 - report of specific offense & not scheduled
 - specific individuals selected
- *Then it is not an “Inspection”*
- *Result: evidence is inadmissible*



Teaching Point

- *Plan unit “inspections” in advance.*
- *This includes Urinalysis*
- *Do a memo (MFR) signed by CDR and/or 1SG stating dates and times that the unit will conduct unit inspections.*
 - *keep it secret*



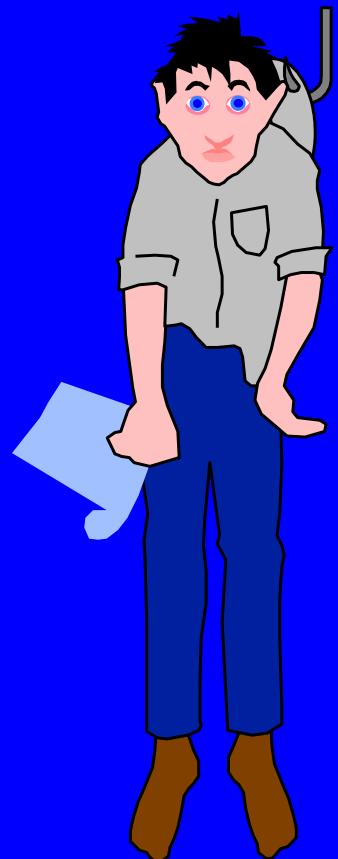
CRIMES

- UCMJ - Articles 78-132 are “enumerated offenses”
- Includes “military” crimes such as disobedience & “civilian” such as murder, theft, writing bad checks
- Art 133 - conduct unbecoming
- Art 134 - prejudice to good order and discipline

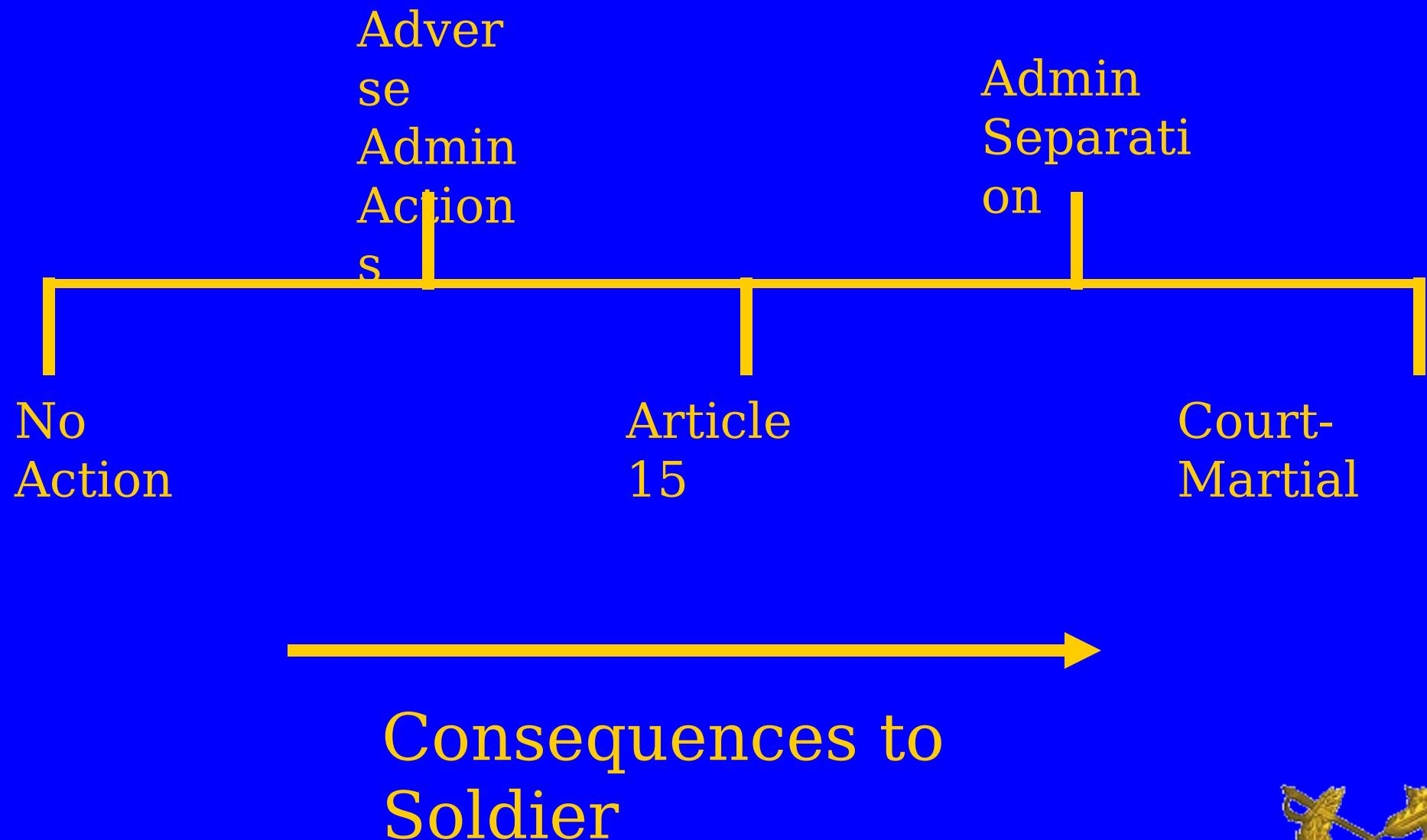


Pretrial Confinement

- Requirements:
 - *Probable cause that the soldier committed a UCMJ offense; and*
 - *Flight Risk, or*
 - *Danger that the soldier will commit further serious misconduct*
- Allows Command to keep soldier incarcerated until trial
- Soldier gets credit for time served
- Process ...
- *Restriction if too limited = confinement*



CONTINUUM OF ACTIONS



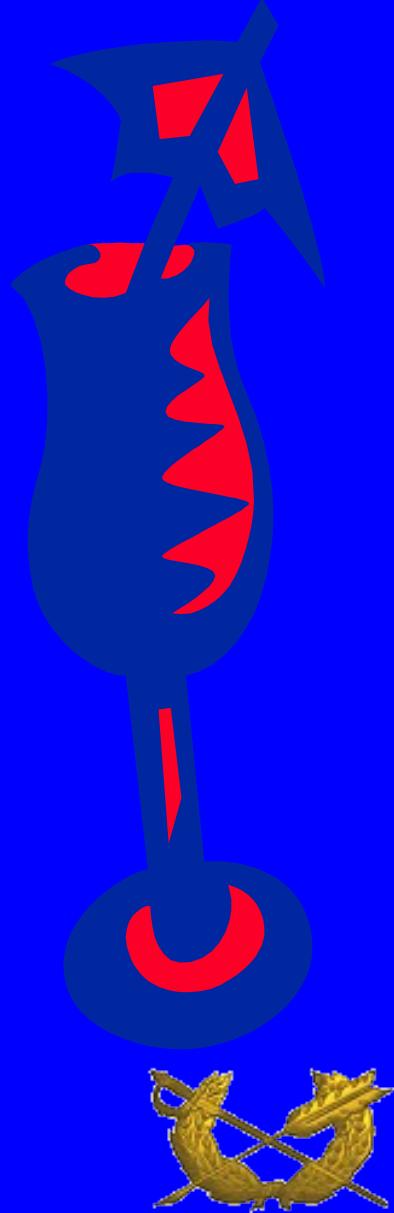
ADVERSE ADMIN ACTIONS

- *FLAGS*
- *EXTRA TRAINING*
- *REVOKE PASS*
- *COUNSELING*
- *ADMIN LETTER OF REPRIMAND*
- *BAR TO REENLISTMENT*
- *INVOLUNTARY SEPARATIONS*



LETTERS OF REPRIMAND

- *Reason:*
 - Typically minor or non-criminal
 - Errors in judgment
 - DUI (AR 190-5) (Mag. Court)
- *Soldier's Rights:*
 - Notice
 - Respond (7 days)
- *Filing: OMPF (GO only) or Local*
(goes away after PCS)



TYPES OF DISCHARGES

- **HONORABLE**
- **GENERAL (under honorable conditions)**
- **OTHER THAN HONORABLE (OTH) - (Board & GO Required)**
- **Entry Level Service (ELS)- Ch. 11 only**
- **Uncharacterized- Fraudulent entry (Ch. 7 only)**
- ***Bad Conduct Discharge (BCD)**
- ***Dishonorable Discharge (DD)**



ENLISTED SEPARATIONS

- Reasons under AR 635-200:

- *parenthood*, Ch. 5-8
- *personality disorder*, Ch. 5-13
- *ADAPCP rehab failure*, Ch. 9
- *entry level performance*, Ch. 11
- *unsat performance*, Ch. 13
- *misconduct*, Ch. 14
- *homosexuality*, Ch. 15
- *overweight*, Ch. 18

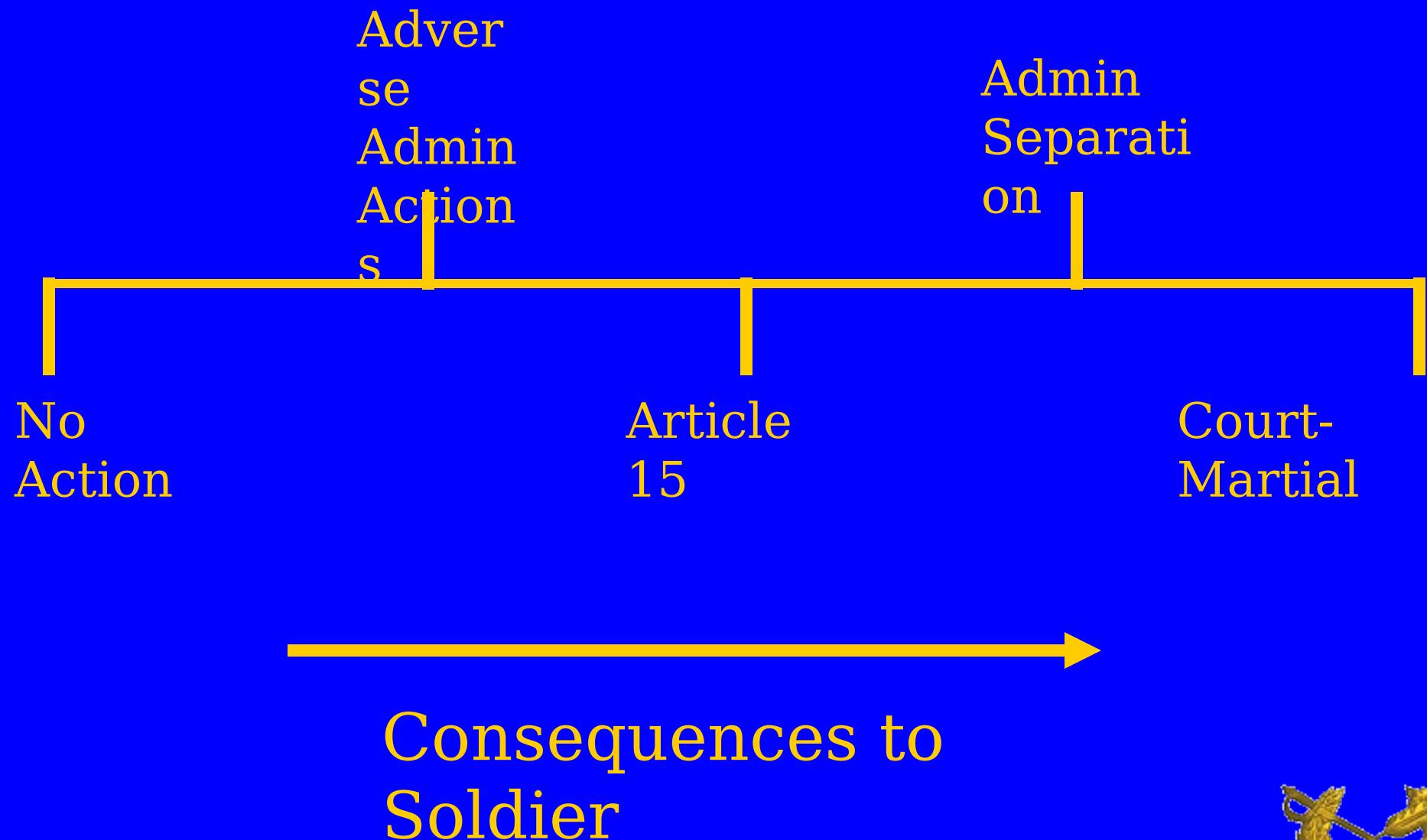


Article 15, UCMJ

Non-Judicial Punishment



CONTINUUM OF ACTIONS



JURISDICTION

- *Criminal Jurisdiction only*
- *WHO?: All active duty or active for training.*
 - *Does not matter where crime occurs!!*
 - *No jurisdiction over civilians*
- *Offenses: UCMJ, local law, Federal*



ARTICLE 15, UCMJ

- *Purpose:*
 - punishment of soldiers for minor offenses
 - correct, educate and reform soldiers
 - maintain good order and discipline
- *Types:*
 - Summarized or Formal
 - Company Grade or Field Grade (only commanding officers)



Process

- *Soldier commits a criminal act*
- *CDR determines that criminal act can be proven beyond reasonable doubt*
- *CDR decides to offer Art.15 to Soldier*
- *CDR or 1SG “reads” Art. 15 to Soldier*
- *Soldier gets 48 hrs to see defense lawyer & decide what to do (Formal only)*
- *Soldier reports & elects Art. 15 or C-M*
- *If Soldier elects Art.15 - CDR proceeds with Art.15 hearing*



RIGHTS OF THE SOLDIER

- *Demand trial by C-M*
- *Remain silent*
- *Consult with counsel (Formal only)*
- *Present case, call witnesses*
- *Be represented (lawyer or not)*
- *Request an open hearing*
- *Appeal decision to next CDR*



Punishment, Summ. Art. 15

- 14 days extra duty
- 14 days restriction
- oral reprimand



Formal Article 15s

- **Company Grade**
 - admonition/reprimand
 - **Correctional Custody - E3 and below only - 7 days**
 - **7 days pay**
 - **reduction 1 grade (E-4 and below only)**
 - **14 days**
 - extra duty
 - restriction
- **Field Grade**
 - admonition/reprimand
 - **Correctional Custody - E3 and below only - 30 days**
 - 1/2 of 1 mos pay for 2 mos
 - reduction 1 or more grades, E4 and below
 - E5 & E6 - one grade
 - 45/60 days
 - extra duty (45)
 - restriction (60)



APPEALS

- *Grounds For Appeal*
 - **Punishment unjust, too harsh, or soldier believes not guilty**
- *Process*
 - **Made in writing**
 - **Soldier may submit supporting documents**
- *Appeal within 5 days after imposition of punishment to next higher CDR*



APPEALS

Action on the Appeal

- *Approve punishment*
- *Reduce the punishment*
- *Suspend the punishment*
- *Set aside the punishment*
- *May not increase punishment
in any “category.”*

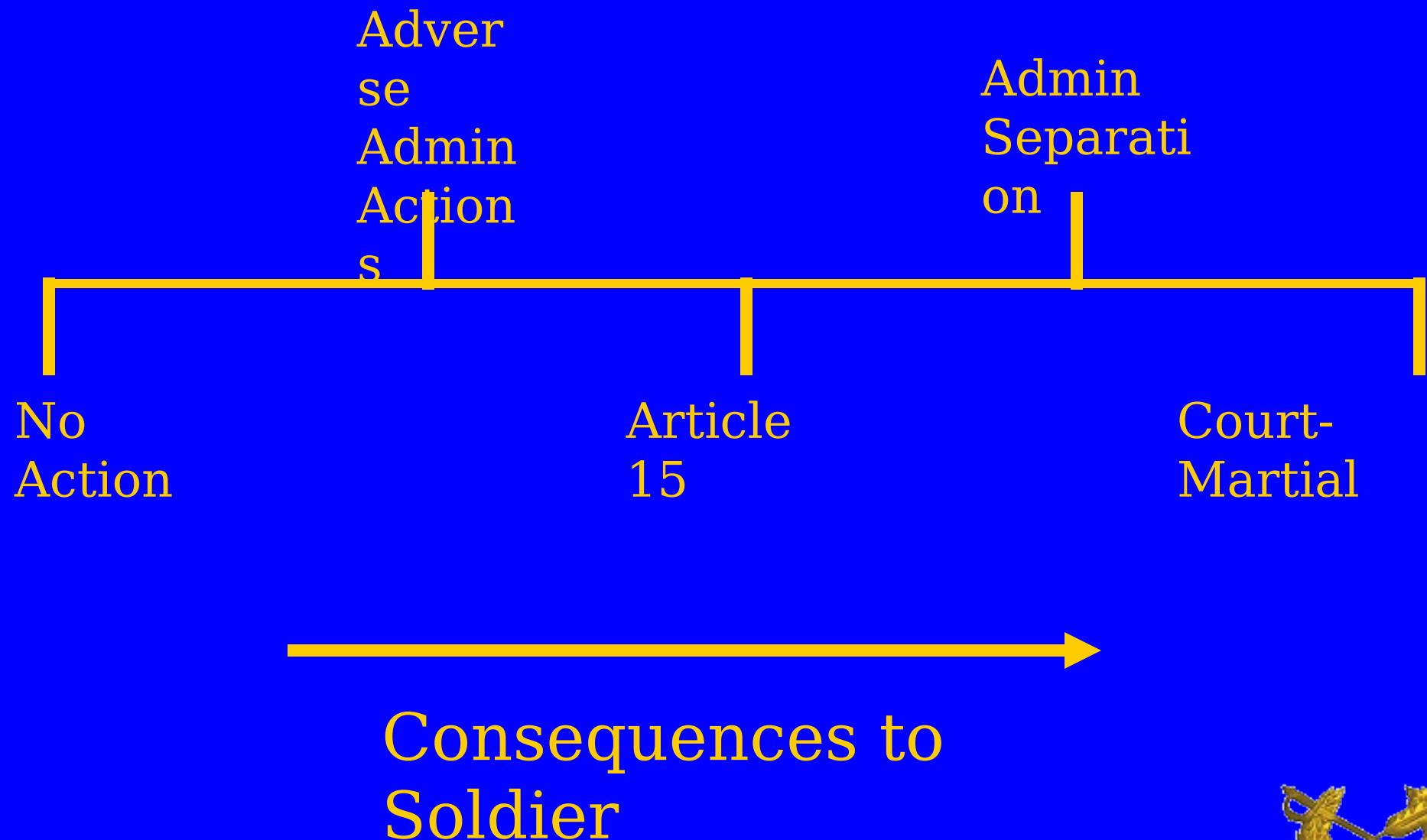


Courts-Martial

The End of the Line



CONTINUUM OF ACTIONS



TYPES OF COURTS-MARTIAL



- Summary
- Special
- BCD-Special
- General



The Court-Martial Process

- Discovery of Misconduct
- Investigation
- Decision Point (see continuum)
- Preferral - Forwarding of Charges
- Article 32 Investigation (maybe)
- Referral by the CG
- Trial by Judge or Panel
- Action by Convening Authority



“Preferral” of Charges

- *Initiates the Court-Martial process*
- *JAG prepares the charge sheet*
- *CDR reads charges to the Accused*
- *Co & Bn CDRs recommend level of C-M*
 - *be careful to avoid UCI*
- *BDE CDR decision point*
- **Article 32 Investigation conducted*
- *CG decision point*
- *“Referral” of charges to OSJA for trial*



Article 32 Hearing

(Only if case will go to a General Courts-Martial)

- *Impartial Investigating Officer*
 - Makes findings & recommendations
 - May not dismiss charges
 - Does not decide guilt & sentence
- *Right to Counsel*
- *Right to Cross Examination*
- *Right to Summarized Written Transcript*



Summary/Special C-M

- BN/BDE CDR's
- Summary = FG 15 (can be turned down)
- Special = No discharge can be adjudged
- BCD-Special - must go to the CG
 - Max punishment of 1 year confinement
 - 2/3 forfeiture
 - no Article 32



General Court-Martial

- *CG refers*
- *Military Judge*
- *Panel (5 members)*
- *Appointed Attorney*
- *Article 32 Hearing*
- *Formal Trial*
- *Any Punishment Under UCMJ*
 - *Total Forfeiture all pay & allowances*
 - *Dishonorable Discharge / Dismissal*
 - *Jail*
 - *Death*
- *Officers or Enlisted*



“Chapter 10”

- Court-Martial proceedings initiated
- Discharge in lieu of C-M UP AR 635-200
- Discharge: OTH or General (rare)
- No Board requirement for OTH
- *Soldier must initiate the Chapter
 - Memo to the CG from TDS
- Chain-of-Command makes recommendations to the CG
- CG is the approval/denial authority



Homosexual Conduct Policy

- “Don’t Ask, Don’t Tell”
- Duty to inquire (“SAM”)
 - Statement
 - Act
 - Marriage
- Separate IAW Chapter 15
- Victim of harassment not subject of investigation



Extremist Organizations

- Participation in extremist organizations & activities is inconsistent with military service
- Army policy - equal treatment & opportunity - SO, DO NOT
 - Participate in public rally
 - Recruit or fund raise
 - Attend meeting in uniform
 - Have a leadership role
 - Distribute literature



HAZING

- **Hazing vs. Custom**

- **Cruel**
 - **Abusive**
 - **Humiliating**
 - **Demeaning**
 - **Harmful**

Punishable under UCMJ



I'm Done



- Questions??

